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Teachers' Religious Garb as an Instrument for Globalization in Education

CAITLIN S. KERR*

ABSTRACT

Nebraska and Pennsylvania currently have laws in place that prohibit public school teachers from wearing religious garb. This Note applies the appropriate constitutional framework—a balancing test—in order to determine the propriety of a religious garb statute. Courts have upheld the statutes in light of perceived government endorsement of teachers' religion and feared impact on impressionable young children. However, both of these concerns are exaggerated and misplaced. Rather, a court must consider the demands a newly globalized world places on effective education for tomorrow's global citizens.

INTRODUCTION

France recently caused a controversy by prohibiting students from wearing “conspicuous”¹ religious garb in the public schools. Although the initiative officially claims to maintain religious neutrality,² the French Prime Minister once suggested that the policy also seeks to “contain the spread of Muslim fundamentalism.”³ While the United

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1. See generally Dominique Custos, *Secularism in French Public Schools: Back to War? The French Statute of March 15, 2004*, 54 AM. J. COMP. L. 337, 343-44, 360 (2006) (citing the French statute and providing an English translation).

2. See Stefanie Walterick, *The Prohibition of Muslim Headscarves from French Public Schools and Controversies Surrounding the Hijab in the Western World*, 20 TEMP. INT'L & COMP. L. J. 251, 251-54 (2006). For a tentative defense of the French statute, see Steven G. Gey, *Free Will, Religious Liberty, and a Partial Defense of the French Approach to Religious Expression in Public Schools*, 42 HOUS. L. REV. 1 (2005).

3. Bootie Cosgrove-Mather, *France Bans Head Scarves in School*, CBS NEWS (Mar. 3, 2004), <http://www.cbsnews.com/stories/2004/02/02/world/main597565.shtml>.

States has criticized the policy's implementation,⁴ it is surprising to note that Nebraska and Pennsylvania (and until recently, Oregon)⁵ have laws that similarly restrict teachers' wearing of religious garb;⁶ however, these laws receive little national press. This Note analyzes the constitutionality and desirability of these states' religious garb statutes in light of the current international controversy surrounding the issue.

Ultimately, the Pennsylvania and Nebraska statutes prohibiting religious garb should be repealed. As a form of religious exercise intersecting with free speech, the wearing of religious garb in public schools is subject to the balancing test first set out in *Pickering v. Board of Education*.⁷ In conducting this balancing test, courts support religious garb statutes by asserting not only the government's interest in maintaining separation between church and state, but also its interest in protecting students from the supposed influence of teachers and from perceived government sponsorship of religion. However, these threats appear hollow in light of their constitutional implications. Namely, a statute prohibiting religious garb may violate the Establishment Clause. Yet, even if a religious garb statute withstands Establishment Clause scrutiny, the demands of globalization add weight to the argument that these statutes should be repealed. Globalization requires educating our youth to be culturally knowledgeable, tolerant, and savvy citizens in a global world.

Part I of this Note will examine the protections afforded by the First Amendment. Specifically, courts use a strict scrutiny standard when determining the constitutionality of a statute restricting religious exercise. In the context of government employment, however, the government may regulate religious exercise as a form of speech, if its

4. See, e.g., 2004 U.S. COMM'N ON INT'L RELIGIOUS FREEDOM ANN. REP. 52-54, available at <http://www.uscirf.gov/images/stories/PDFs/annualreport2004may.pdf> ("[T]hough increased immigration in France in recent years has created new challenges for the French government, including integration of these immigrants into French society as well as problems of public order, these challenges should be addressed directly, and not by inappropriately limiting the right to freedom of thought, conscience, religion, and belief.").

5. See William McCall, *Classroom Controversy: Oregon Teachers Restricted in What They Can Wear Due to Law Originally Enacted for KKK*, MISSOULIAN, Sept. 5, 2009, http://missoulain.com/lifestyles/faith-and-values/religion/article_d76385ce-9988-11de-b807-001cc4c002e0.html; Tracy Russo, *Fulfilling the Promise*, U.S. DEP'T JUST. BLOG (May 20, 2010), <http://blogs.usdoj.gov/blog/archives/805>.

6. NEB. REV. STAT. ANN. § 79-898 (West 2010); OR. REV. STAT. ANN. § 342.650 (West 2010) (repealed 2010); 24 PA. CONS. STAT. ANN. § 11-1112 (West 2010).

7. *Pickering v. Board of Educ.*, 391 U.S. 563, 568 (1968) ("The problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.").

regulation passes the balancing test set forth in *Pickering*. Part II will explore the justifications for such statutes in an effort to determine the appropriate balance in favor of, or against, religious garb statutes. In addition to the need for church-state separation, this analysis will ultimately yield two prominent concerns: fear of creating the appearance of government sponsorship of religion and fear of inappropriate influence on students' religious choice. Part III will establish the highly speculative nature of these interests. Accordingly, Part IV will examine the other side of the balance—constitutional safeguards for the free exercise of religion—in two parts. First, Part IV will examine whether a religious garb statute would violate the Establishment Clause. Second, Part IV will examine the weight globalization adds in favor of religious garb. Part V will weigh the interests of Part III and Part IV, and after balancing pro-restriction justifications against the new countervailing concerns globalization demands of education, I conclude that statutes prohibiting public school teachers from wearing religious garb, even if constitutional, should be repealed.

I. THE FIRST AMENDMENT

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."⁸ The Framers believed that government and religion operated best when state functions were separated from church functions.⁹ As a result, the First Amendment provides two opposing dictates by which the government must abide. First, the government may not establish a religion by creating, formally sanctioning, or preferring any religion, including preferring one religious sect over another, preferring religion over nonreligion, or preferring nonreligion over religion. At the same time, the government must not prohibit the free exercise of religion by infringing on individuals' rights to order their lifestyles and conduct according to the proscriptions of any, or no, religion.

In application, these two clauses more often conflict than complement one another, for "it becomes apparent that some accommodations of religion that facilitate its free exercise may offend the prohibition against governmental establishments of religion, and that some measures taken to prevent prohibited establishments might offend the guarantee of free exercise of religion."¹⁰ As a result, the

8. U.S. CONST. amend. I.

9. See KATHLEEN M. SULLIVAN & GERALD GUNTHER, CONSTITUTIONAL LAW 1248 (16th ed. 2007).

10. Calvin Massey, *The Political Marketplace of Religion*, 57 HASTINGS L.J. 1, 3 (2005).

Supreme Court has developed tests to determine whether legislation violates the Establishment Clause or the Free Exercise Clause.¹¹ The issue of religious garb in the public school classroom demonstrates the complexity of this conflict. Religious garb triggers not only teachers' free exercise rights, which will be discussed below, but also potentially implicates the prohibition on religious establishment by the government, which will be discussed in Parts III and IV.

The Free Exercise Clause requires that laws targeting or impacting religious exercise satisfy certain requirements. It subjects laws that facially target religion to the strictest scrutiny because these statutes place a discriminatory burden on the fundamental right of religious free exercise.¹² Strict scrutiny means that a law must be in furtherance of a compelling interest and must achieve this interest by narrowly tailored means.¹³ At the state level, laws that apply widely to a broad range of conduct but that impact religious exercise are not subject to strict scrutiny¹⁴ unless the state's courts construe the state's constitution to protect free religious exercise from nondiscriminatory laws, or the state legislature enacts a Religious Freedom Restoration Act (RFRA).¹⁵ If a state enacts a RFRA, such laws of general applicability that impact religion are also subject to strict scrutiny.

Although the Constitution specifically identifies freedom of religious exercise in a separate clause, free exercise rights, as a form of expression, often overlap with broader free speech issues. This overlap demonstrates the nature and extent of rights and restrictions in the public school system. The public education system operates as a department of the government, and public schools must abide by constitutional limits. Although public school students and teachers

11. See, e.g., *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971).

12. See, e.g., *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993).

13. See *id.* at 531-32.

14. See *Empl. Div. v. Smith*, 494 U.S. 872, 884-885 (1990).

15. The federal RFRA sought to restore strict scrutiny to generally applicable laws challenged under the Free Exercise Clause in the face of *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990). See 42 U.S.C. § 2000bb (2006). The RFRA was held unconstitutional as applied to the states, see *City of Boerne v. Flores*, 521 U.S. 507, 536 (1997), but many states have since enacted state law versions that are substantially similar to the original RFRA. For a list and discussion of state RFRAs, see Christopher Lund, *Religious Liberty After Gonzales: A Look at State RFRA's* 473-79 & n.67 (Wayne State Univ. Law Sch. Legal Studies Research Paper Series, Working Paper No. 10-12, 2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1666268.

retain their constitutional rights while they are at school,¹⁶ their rights have been restricted in light of the unique educating and socializing goals of the school, and the special relationship of the government with its employees.

With respect to speech, public schools may regulate speech when it would be impermissible for the government to do so were the speech to occur in the public sphere.¹⁷ This regulation occurs in light of schools' particular purposes—educating students and teaching students the boundaries of socially appropriate behavior.¹⁸ A student's exercise of free speech that “materially and substantially interfere[s]” with a school's educating and socializing mission can be proscribed.¹⁹ A school is also free to disassociate itself from certain inappropriate conduct that would be protected in the public sphere by punishing that conduct in order to send a message that certain behavior is socially unacceptable.²⁰ Therefore, while students do not “shed their constitutional rights . . . at the schoolhouse gate,”²¹ they may experience restricted freedom of expression. Just as schools may regulate speech, students' religious free exercise rights may be permitted and prohibited in light of the school's special mission.

Teachers' free speech rights may also be restricted, albeit under a line of cases regarding government employees. Government employees retain their constitutional rights as citizens. Accordingly, public officials may not regulate employees' speech “as citizens to comment on matters of public interest in connection with the operation of [their workplace]”²² because such political speech lies at the core of the First Amendment. However, a citizen entering governmental service as a public employee “must accept certain limitations on his or her freedom.”²³ As a result, when an employee's speech “disrupts the efficiency of the public services [the government] performs through its employees,”²⁴ the government enjoys “wide latitude in managing [its] offices”²⁵ and can restrict

16. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”).

17. See, e.g., *Morse v. Frederick*, 551 U.S. 393, 396-97 (2007).

18. See *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682-83 (1986); *Tinker*, 393 U.S. at 509 (discussing a public school's authority to regulate speech in order to prevent disturbances in the classroom).

19. *Tinker*, 393 U.S. at 512-13 (quoting *Burnside v. Byars*, 363 F.2d 744, 749 (5th Cir. 1966)).

20. See *Bethel*, 478 U.S. at 682-83.

21. *Tinker*, 393 U.S. at 505.

22. *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968).

23. *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006).

24. *Pickering*, 391 U.S. at 568.

25. *Connick v. Myers*, 461 U.S. 138, 146 (1983).

employees' speech.²⁶ In determining the outer limits of the latitude afforded the government in this context, a court must balance the citizen's interest in speaking against the government agency's interest in providing public services.²⁷ Yet, in cases in which employees' speech relates to a matter of "private concern," such as employee grievances,²⁸ employment restrictions on speech are not scrutinized and are presumed constitutional.

Returning to religious exercise, United States Supreme Court "precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression."²⁹ Secular expression by a citizen on matters of public concern often sounds in political tones. Political speech lies at the core of the Free Speech Clause of the First Amendment, and regulations of core political speech must pass strict scrutiny.³⁰ Likewise, the Supreme Court once described religious expression as so integral to the Free Speech Clause that neglect of religious expression was akin to producing "Hamlet without the prince."³¹ In addition, the separate religion clauses in the Constitution emphasize the importance of religious exercise. Yet, in the context of government employment, courts subject political speech to a balancing test. Viewing religious exercise through this free speech lens, religious garb is afforded the same level of protection as political speech by government employees: a balancing test.

The Supreme Court first outlined the balancing test applied to political speech, or speech on other "matters of public concern," in *Pickering*.³² In that case, a school administration discharged a teacher in retaliation for comments the teacher made about the administration's handling of bond proposals and use of other financial resources. In analyzing the issue, the Court applied a test that endeavors to "arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees."³³ One side of the scale focuses on both the individual's and society's interest in the offending speech. The

26. See, e.g., *id.* (describing discharge from employment for certain types of speech as an acceptable form of restriction).

27. *Pickering*, 391 U.S. at 568.

28. *Connick*, 461 U.S. at 154.

29. *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995).

30. *Hynes v. Mayor of Oradell*, 425 U.S. 610, 626-27 & n.3 (1976).

31. *Capitol Square*, 515 U.S. at 760.

32. *Pickering*, 391 U.S. at 568.

33. *Id.*

opposite side of the scale focuses on the effect of the conduct on effective administration and achievement of workplace goals.

The balance tips in favor of the government when the individual's speech interferes with the completion of the individual's duties or the duties of other co-workers. In *Pickering*, the teacher expressed his views at a school board meeting. In ultimately protecting the teacher's speech, the Court noted that his speech "neither [was] shown nor can be presumed to have in any way either impeded the teacher's proper performance of his daily duties in the classroom or to have interfered with the regular operation of the schools generally," in part because the teacher criticized distant school board administrators.³⁴ By contrast, in *Connick v. Myers*, an assistant prosecutor used an internal office questionnaire to criticize her immediate supervisors and their application of personnel rules. Although a portion of the discharged prosecutor's speech involved a matter of public concern, the Court held that the speech did not tip the balance in favor of protection. The Court explained that the prosecutor's questionnaire stirred up a possible "mini-insurrection" among her co-workers.³⁵ Thus, when an individual's speech interferes with performance of workplace duties, or with others' performance of their duties, the individual's speech, albeit on a matter of public concern, is permissibly restricted.

The balance tips in favor of protecting the individual's speech when not only the individual has an interest in his speech, but also when society has a distinct interest in the individual's speech. The Supreme Court later explained that when a teacher comments on the school administration's use of public funds, society has a marked interest in the teacher's speech.³⁶ Society has an interest in "receiving the well-informed views of government employees engaging in civic discussion,"³⁷ for these government employees are often particularly and uniquely well informed. As a result, the balance must also give way to society's interest in the individual's speech.

Unlike the speech in *Pickering* and *Connick*, teachers' religious garb does not usually involve criticism of one's workplace or superiors, nor does it involve comment on civic debate by an individual necessarily well informed on the issue. Yet, teachers' religious garb may still disrupt the workplace, while possibly offering greater societal value. The next section analyzes those concerns, including whether teachers' religious garb interferes with the achievement of schools' educating and

34. *Id.* at 572-73.

35. *Connick v. Myers*, 461 U.S. 138, 151-52 (1983).

36. See *Garcetti v. Ceballos*, 547 U.S. 410, 419-21 (2006).

37. *Id.* at 419.

socializing functions and whether society has a specific vested interest in a teachers' religious expression.

II. TEACHERS' RIGHT TO WEAR RELIGIOUS GARB IN NEBRASKA AND PENNSYLVANIA

As the student body has evolved into a more religiously diverse entity, the Constitution's religion clauses have become an important source of rights. Now more than ever, school officials must steer a careful course between the prohibition of the Establishment Clause and the command of the Free Exercise Clause, all while exercising their rights as governmental employers within constitutional limits. Likewise, in analyzing challenges to speech-restrictive policies or statutes, courts must balance teachers' freedom of religious exercise against three potentially weighty interests: the state's interest in maintaining proper church-state separation and the more specific interests in protecting students and avoiding the appearance of entanglement.

A. Teachers' Religious Garb and the Establishment Clause

A heavy weight is placed on the scale if religious garb statutes are necessary to maintain the requisite church-state separation, lest public schools violate the Establishment Clause. If the wearing of religious garb by a teacher violates the Establishment Clause, then a law prohibiting such dress serves as an implementing regulation of a constitutional prohibition. Yet, if the wearing of religious garb by a teacher does not violate the Establishment Clause, then this interest impresses far less weight on the scale.

Importantly, the Oregon and Pennsylvania state courts provided one answer to the Establishment Clause question by illuminating their conception of the relationship between the Free Exercise Clause and the Establishment Clause as applied to teachers' religious garb.³⁸ According to these courts, the Free Exercise Clause does not end where the Establishment Clause begins. Rather, a gap exists between the end of the Free Exercise Clause and the beginning of the Establishment Clause wherein a state may make policy decisions about how it will regulate its public school teachers.

38. Because these state court decisions have interpreted the issue, the Establishment Clause jurisprudence will not be more fully analyzed here. For discussion of Supreme Court precedent on the issue, see *infra* Part IV.

This idea was implicitly approved in an early religious garb case, *Hysong v. School District of Gallitzin Borough*.³⁹ The Supreme Court of Pennsylvania declined to hold that public school instruction by nuns dressed in their religious garb constituted sectarian teaching as prohibited by law.⁴⁰ However, the court also noted, "the legislature may, by statute, enact that all teachers shall wear in the school room a particular style of dress, and that none other shall be worn."⁴¹ The court signified that although religiously garbed teachers' instruction did not constitute an impermissible establishment of religion, it was not protected as the free exercise of religion.⁴² The legislature was thus free to determine whether it would regulate religious garb.

The Oregon case *Cooper v. Eugene School District No. 4J* confirmed this conception nearly one hundred years after Pennsylvania's *Hysong* decision.⁴³ The *Cooper* court illuminated the gap identified in *Hysong* by explaining that it required lawmakers to make a "policy choice."⁴⁴ The *Cooper* court explained the decisions of other courts in similar cases (including Pennsylvania's *Hysong* decision) before holding that generally "more than a teacher's religious dress is needed to show a forbidden sectarian influence in the classroom."⁴⁵ The court thus maintained the "gap" between the clauses and upheld the law based on the Oregon legislature's policy justifications.

While *Hysong* and *Cooper* clearly distinguished the limits of the Establishment Clause and the Free Exercise Clause, state courts have yet to comment further on the Free Exercise issue. Rather, in 2003, a federal court applying Pennsylvania law simply reiterated that "merely employing an individual . . . who unobtrusively [sic] displays her religious adherence is not tantamount to government endorsement of that religion, absent any evidence of endorsement or coercion."⁴⁶ In so doing, this court reaffirmed that the wearing of religious garb was not an Establishment Clause violation.

39. *Hysong v. Sch. Dist. of Gallitzin Borough*, 30 A. 482 (Pa. 1894).

40. *Id.* at 484.

41. *Id.*

42. *Id.* This is not a concept unique to teachers' wearing of religious garb. In *Locke v. Davey*, Justice Rehnquist indicated the Establishment Clause and the Free Exercise Clause are frequently in tension, but "there is room for play in the joints' between them. In other words, there are some state actions permitted by the Establishment Clause but not required by the Free Exercise Clause." *Locke v. Davey*, 540 U.S. 712, 718-19 (2004) (citation omitted).

43. *Cooper v. Eugene Sch. Dist. No. 4J*, 723 P.2d 298 (Or. 1986). This case was cited with approval by *United States v. Board of Education for the School District of Philadelphia*, 911 F.2d 882, 888 (3rd Cir. 1990).

44. 723 P.2d at 308.

45. *Id.*

46. *Nichol v. ARIN Intermediate Unit 28*, 268 F. Supp. 2d 536, 554 (W.D. Pa. 2003).

B. Policy Regulation of Teachers' Religious Garb

Although the Oregon and Pennsylvania courts held that the wearing of religious garb by a teacher is not an Establishment Clause violation, the courts nevertheless allowed regulation of religious garb. The primary policy justification cited by these courts is that teachers' religious garb is capable of interfering with the public schools' educating and socializing functions, a reason that provides significant justification for allowing restrictions. While these cases come from only two states, the language and themes employed are broad enough that they could be used to justify any number of laws infringing on teachers' freedom of speech or free exercise rights. The courts' descriptions of the policy considerations and choices made by state legislatures are thus instructive for future legal challenges to this or a similar law.

Courts most commonly employ two complementary justifications for restriction: avoiding the impression of government sponsorship of religion and avoiding coercion of impressionable students. Even though religious garb has been held not to violate the Establishment Clause, states seek to avoid the impression that the government, as the teachers' employer, endorses the teachers' religion.⁴⁷ An impression of government endorsement is problematic because the audience consists of young children and teenagers who may be unable to separate the teachers' relationship with the government-employer from the teachers' private religious beliefs. If students are as impressionable as is feared, and they perceive government endorsement of religious beliefs, then they may feel pressure to conform their own beliefs to those of their teachers.

Concern regarding teachers' influence arises regardless of whether a child is sophisticated enough to perceive a relationship between the government, schools, and teachers. Elementary, middle, and high school students are uniquely situated as a "captive" audience⁴⁸ due to mandatory school attendance laws. Furthermore, teachers exert an

47. See, e.g., *Sch. Dist. of Phila.*, 911 F.2d at 899 ("Accommodating Ms. Reardon by permitting her to wear her religious garb while she is teaching conveys to her students that the state favors or prefers religion over nonreligion."); *EEOC v. Reads, Inc.*, 759 F. Supp. 1150, 1159 (E.D. Pa. 1991) ("The proscription on religious garb is intended to prevent any appearance of State sponsored religion . . ."); *Cooper*, 723 P.2d at 313 ("Their concern is that the teacher's appearance in religious garb may leave a conscious or unconscious impression among young people and their parents that the school endorses the particular religious commitment of the person whom it has assigned the public role of teacher. This is what makes the otherwise privileged display of a teacher's religious commitment by her dress incompatible with the atmosphere of religious neutrality that [Oregon state law] aims to preserve, or so the school authorities may decide.").

48. See, e.g., *Sch. Dist. of Phila.*, 911 F.2d at 899.

intense influence over children because teachers spend a great deal of time with students during their formative years, years during which students are particularly susceptible to perceived differences and peer pressure.⁴⁹

For these reasons, legislatures and courts worry that teachers who appear daily in religious garb in front of their students will unintentionally exert pressure on students to conform to teachers' religious beliefs.⁵⁰ This pressure will only increase if students perceive that the school as a whole supports the teachers' religion.⁵¹ Furthermore, this pressure will infringe on the *students'* absolute right to freedom of religious belief⁵² because "students might see a teacher wearing religious clothing, and understand that this expression of faith as a statement concerning what beliefs they too should hold."⁵³ By regulating teachers' garb, legislatures seek to protect students from what they perceive as subtle pressure to convert and conform. However, whether this pressure indeed exists, and whether it could or does interfere with schools' educating and socializing function, has yet to be thoroughly tested or firmly established.

49. See, e.g., *id.* ("In the classroom environment, it cannot be gainsaid that a teacher is a powerful influence on children, particularly, as here, young children (elementary-school age).").

50. It may be that the higher the frequency of appearance in religious garb, the greater the risk of pressure to conform. See, e.g., *Cooper*, 723 P.2d at 313 ("The statute therefore would not be violated whenever a teacher makes an occasional appearance in religious dress, for instance on her way to or from a seasonal ceremony. It is the same distinction as that between an occasional religious meeting, parade or brief display in a public park or building and the permanent erection of a religious symbol Only wearing religious dress as a regular or frequently repeated practice while teaching is grounds for disqualification.").

51. See, e.g., *Sch. Dist. of Phila.*, 911 F.2d at 899 ("It is a short leap in logic from these facts to conclude that children could, in exercise of their curiosity, think that a school is favoring religion per se to the detriment of nonreligion by permitting [a teacher] to wear her religious apparel.").

52. See, e.g., *Cooper*, 723 P.2d at 309 ("Nonetheless, the aim of maintaining the religious neutrality of the public schools furthers a constitutional obligation beyond an ordinary policy preference of the legislature. It is the obligation stated in [Oregon Constitution] Article VIII, section 3, to provide for 'a uniform, and general system of Common Schools,' which must be done without imposing on the religious freedom under Article I, sections 2 and 3, of the children who attend those schools.").

53. *EEOC v. Reads, Inc.*, 759 F. Supp. 1150, 1159 (E.D. Pa. 1991) (explaining further that "[i]f, however, the clothing is worn for religious reasons but is unlikely to convey a message concerning religious affiliation or belief to students, the risk is not present and the prohibition is unnecessary").

III. QUESTIONABLE WEIGHT OF JUSTIFICATIONS FOR RESTRICTING RELIGIOUS GARB

The Pennsylvania and Oregon courts argued that the air of government sponsorship and the possible impact on children justified a policy regulating the religious garb of teachers. It appears these justifications continue to be used in the present day, as Oregon recently passed an amendment to its religious garb statute that exempted all school employees *except* teachers from the prohibition.⁵⁴ However, Oregon later removed the exception⁵⁵ after a warning from the U.S. Department of Justice that the law likely violated Title VII of the Civil Rights Act of 1964.⁵⁶ Despite these states' concerns, the actual degree to which these concerns materialize is far more speculative than the legislatures and courts indicate.

A. Teachers' Influence on Students

The theory that schools and teachers influence children socially is widely recognized and generally accepted. Scholars and the U.S. Supreme Court agree that schools and teachers provide much more than academic instruction. "In some ways, [public education] is a microcosm of the larger society" that aids in the acquisition of "skills necessary to the functioning of a healthy democratic republic."⁵⁷ The Court has recognized that "schools must teach by example the shared values of a civilized social order" and teachers serve as "role models" of these values.⁵⁸ This theory—that schools and teachers not only nurture students to intellectual development, but also inspire values that society deems beneficial—supports the concerns of the courts outlined in Part II.

In spite of this widely accepted theory, the actual degree to which teachers shape children's intellectual, social, cultural, and religious development is uncertain. While studies document that teachers' characteristics influence children's academic success, research on teachers' non-academic influence is scarce. Before lawmakers and courts can determine ultimately whether to allow teachers to wear religious

54. See McCall, *supra* note 5.

55. Press Release, House Speaker's Office, Or. State Legislature, Governor Signs Repeal of Ban on Religious Dress (April 1, 2010), http://www.leg.state.or.us/press_releases/hunt_040110.pdf.

56. Russo, *supra* note 5.

57. William Lester, *Student Religious Expression Within Public Schools*, in 2 CHURCH-STATE ISSUES IN AMERICA TODAY 73, 98 (Ann W. Duncan & Steven L. Jones eds., 2008).

58. *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683 (1986).

garb in the classroom, they must know whether this clothing will interfere with, encourage, or have no effect on the educating and socializing functions of the public school system.

By way of example, a recent study suggests that students might not identify teachers as role models.⁵⁹ Nearly 400 English school children aged ten to twelve and fourteen to sixteen were asked to list their role models—only 2.4% listed a teacher.⁶⁰ Teachers ranked sixth on young girls' lists of role models and ninth on young boys' lists.⁶¹ In contrast, close relatives topped both lists.⁶² This result suggests that additional guidance from parents and close relatives could overcome any possible influence by teachers. As the authors admit, there are some limits to the study.⁶³ The students provided the rankings themselves, and, while students may not self-identify teachers as role models, subconsciously they might perceive teachers as role models.

In a related inquiry, the German Federal Constitution Court noted, "none of the experts [who testified at a hearing] had found that exposing children to a headscarf would lead to religious conversion."⁶⁴ While more research needs to be done, it appears that teachers may not have as much influence as expected. With only assumptions to support the assertion that teachers' religious garb influences students, but not much research to disprove it, society's interest in protecting children from teachers' religious influence is unclear. With no evidence on one side of the scale, and scant evidence on the other, the courts' speculation adds little weight to the scale in favor of regulating teachers' religious garb.

B. Government Sponsorship of Religion

Courts are also concerned about a guise of government sponsorship of religion when teachers wear religious garb. If students are aware of the interrelationship of teachers, public schools, and the government,⁶⁵

59. Patricia Bricheno & Mary Thornton, *Role Model, Hero or Champion? Children's Views Concerning Role Models*, 49 EDUC. RES. 383, 385, 393-94 (2007) (defining a role model as "namely a person you respect, follow, look up to or want to be like").

60. *Id.* at 386-87, 392.

61. *Id.* at 390.

62. *Id.*

63. *Id.* at 394 (speculating that teachers may have fared better "if children were asked who they 'looked up to' and 'respected' rather than possibly just focusing on [alternative prompts such as] 'want to be like' and 'follow'").

64. Robert A. Kahn, *The Headscarf as Threat: A Comparison of German and U.S. Legal Discourses*, 40 VAND. J. TRANSNAT'L L. 417, 427 (2007).

65. See also *Nichol v. ARIN Intermediate Unit 28*, 268 F. Supp. 2d 536, 553 (W.D. Pa. 2003) (emphasis omitted) (discussing *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 118, 121 (2001)), in which the Supreme Court "explained that any danger that elementary

then the concern about an underlying message of sponsorship must be balanced against the converse message of hostility if teachers are precluded from wearing religious garb. The sponsorship-hostility argument is reflected in a pluralism-secularism dichotomy that is not new to constitutional interpretation and theory. Constitutional scholar Michael McConnell articulated one of many arguments on the topic when he argued for pluralism,⁶⁶ an argument which undermines the government sponsorship concern.

After reviewing what he characterizes as the errors of religion clause jurisprudence under the Warren, Burger, and Rehnquist Courts, McConnell argues for a pluralistic interpretation of the religion clauses.⁶⁷ The clauses should be seen as guaranteeing "a pluralistic republic in which citizens are free to exercise their religious differences without hindrance from the state . . . whether that hindrance is for or against religion."⁶⁸ Pluralism is the best form of church-state relationship because true neutrality is an "unattainable idea," for when "the government communicates to the people it will favor some ideas and oppose others," for its speech automatically loses its neutrality.⁶⁹ But if the government tries to attain neutrality by not speaking about religion, this relegates religion to the private sphere, and, in effect, creates a secular culture that is hostile to religion.⁷⁰ Without further research, the argument that a religious garb statute fosters religious hostility nullifies the argument that religious garb creates the appearance of governmental support. As a result, this interest adds only a slight weight to the scale.

IV. ESTABLISHMENT CLAUSE VIOLATION AND GLOBALIZATION IN EDUCATION

At least three interests exist in support of teachers wearing religious garb. First, teachers (and the citizenry at large) have a strong and protected interest in religious expression. Yet in the case of

school children would misperceive an endorsement of religion (if the school were to permit religious organizations to use its public forums to deliver religious based messages) would be no greater than the danger that they might perceive a hostility toward religion (if the school permitted other community organizations with secular messages to use the forum but prohibited those with religious affiliations)."

66. Michael W. McConnell, *Religious Freedom at a Crossroads*, 59 U. CHI. L. REV. 115, 168 (1992). For a rebuttal of McConnell's argument, see Kathleen M. Sullivan, *Religion and Liberal Democracy*, 59 U. CHI. L. REV. 195 (1992).

67. McConnell, *supra* note 66, at 168.

68. *Id.*

69. *Id.* at 188.

70. *See id.* at 190.

government employment, these interests are permissibly abridged under certain circumstances. As a result, the focus of this section will be on the remaining two interests. Second, a statute restricting religious garb may violate the Establishment Clause because it may inhibit religious exercise. If so, a heavy weight is added to the scale in favor of allowing religious garb in classrooms and repealing religious garb statutes. Third, religious garb may be an instrument of globalization in the public schools, fostering tolerant and culturally savvy global citizens.

In 2003, a Pennsylvania federal court suggested that religious garb statutes might not pass constitutional muster.⁷¹ The court struck down a governmental agency's religious garb prohibition that aligned with the state's religious garb statute, and noted that "[i]n the current legal landscape of the Establishment Clause, it is unlikely that the Garb Statute would withstand the heightened scrutiny and endorsement analysis to which it now must be subjected."⁷² Under current U.S. Supreme Court Establishment Clause jurisprudence, a "statute must have a secular legislative purpose; . . . its principal or primary effect must be one that neither advances nor inhibits religion; [and] finally, the statute must not foster 'an excessive government entanglement with religion.'"⁷³ Justice O'Connor conceptualized the Establishment Clause inquiry as an "endorsement test"—one "asks whether government's actual purpose is to endorse or disapprove of religion" and "whether, irrespective of government's actual purpose, the practice under review in fact conveys a message of endorsement or disapproval."⁷⁴

In theory, the Establishment Clause prevents the advancement, inhibition, endorsement, or disapproval of religion; it applies equally to statutes creating an establishment of religion as to statutes prohibiting certain religious practices. In reality, cases dealing with prohibited religious expression are more practically analyzed under the Free Exercise Clause.⁷⁵ However, when the Supreme Court analyzed a

71. See *Nichol v. ARIN Intermediate Unit 28*, 268 F. Supp. 2d 536, 555 (W.D. Pa. 2003).

72. *Id.*

73. *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971) (citations omitted).

74. *Lynch v. Donnelly*, 465 U.S. 668, 690 (1984) (O'Connor, J., concurring).

75. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993) (explaining that Establishment Clause challenges "for the most part have addressed governmental efforts to benefit religion or particular religions," whereas, when statutes disfavor religion, "the Free Exercise Clause is dispositive"). For a case currently working its way through the 9th Circuit that could possibly reach the Supreme Court, see *Catholic League for Religious and Civil Rights v. City of San Francisco*, 567 F.3d 595 (9th Cir. 2009), *reh'g granted*, 586 F.3d 1166 (2009) (posing an Establishment Clause challenge to a city resolution expressing disapproval of Catholic adoption policies).

statute purporting to disapprove of religion under the Establishment Clause, the Court indicated that, barring religious animus,⁷⁶ there is sufficient “play in the joints”⁷⁷ between the Establishment Clause and the Free Exercise Clause such that the states may enforce wider church-state separation than the Establishment Clause requires. *Locke v. Davey* involved such a challenge. A Washington state scholarship program was challenged under the Establishment Clause because it precluded its recipients from pursuing a degree in theology. In upholding the constitutionality of the program, however, the Court found no religious animus, and it further indicated that the state’s desire to avoid funding a religious degree fell well within the “room”⁷⁸ between the Free Exercise Clause and the Establishment Clause.

A statute barring religious garb in the classroom also likely falls within this gap. The purpose of these statutes, as shown by current court interpretations, is to prevent students from feeling subtle pressure to conform to their teachers’ religious beliefs, and to avoid the air of government sponsorship of teachers’ religion.⁷⁹ However, the law certainly inhibits religious expression in that teachers are not permitted to wear silent indicators of their faith. In addition, the law could require government entanglement in religion if school administrators were required to assess whether a teacher’s outfit involved a personal style choice or a religiously mandated piece of clothing.⁸⁰ At first glance, then, it would appear that a religious garb statute could violate the Establishment Clause.

In spite of these possibilities, the Oregon state court again indicated that, just as teachers’ religious garb would not violate the Establishment Clause, neither would a statute prohibiting religious garb. In upholding such a statute, the court opined, “a rule against such religious dress is permissible to avoid the appearance of sectarian influence, favoritism, or official approval in the public school.”⁸¹ This interpretation, combined with the Supreme Court’s conception of the

76. *Locke v. Davey*, 540 U.S. 712, 725 (2004).

77. *Id.* at 718-19 (quoting *Walz v. Tax Comm’n of N.Y.*, 397 U.S. 664, 669 (1970)).

78. *Id.* at 725.

79. The legislative history, however, speaks to a purpose more akin to the religious animus of *Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). Originally proposed and supported by the Ku Klux Klan, these statutes sought to prevent nuns from teaching in the public schools. Later support of the law focused on protecting “impressionable schoolchildren.” McCall, *supra* note 5.

80. See, e.g., *EEOC v. Reads, Inc.*, 759 F. Supp. 1150, 1158 (E.D. Pa. 1991) (avoiding inquiry into religious prescriptions by determining whether garb is religious by what objective observers would conclude about whether the wearer’s dress is religiously motivated).

81. *Cooper v. Eugene Sch. Dist. No. 4J*, 723 P.2d 298, 308 (Or. 1986).

"play in the joints" between the two clauses, suggests that a religious garb statute would pass constitutional muster.

In the event that a religious garb statute is constitutionally permissible, the interest in avoiding a constitutional violation weighs light on the balance. However, globalization adds an additional weight to the scale; it requires that today's students be educated in light of their futures as global citizens in a diverse world.

As a result of the increased migration of peoples, ideas, and goods characterizing globalization, "[e]ducators around the world are faced with new challenges of balancing local, national, and global norms and values in the process of educating children."⁸² As the educational landscape changes, a new goal arises: education must socialize "children for their futures in global society."⁸³ Harvard Professor of International Education Fernando Reimers recently articulated that globalization requires students to gain "'global competency'—the knowledge and skills that help them cross disciplinary domains to comprehend global events and respond to them effectively."⁸⁴ Global competency certainly requires proficiency in a range of academic disciplines, but it also requires proficiency in relationships. In order to be successful global citizens, children must develop knowledge of and appreciation for the cultural, religious, and ethnic diversity that globalization brings.

Tomorrow's global citizens need these skills because they will interact with a diverse group of people on a daily basis. In conducting their everyday affairs, they must be able to navigate the unique values and lifestyles espoused by their contemporaries. As a result, Reimers mentions one important dimension of this competency: "a positive approach toward cultural differences and a willingness to engage those differences. That requires empathy with people with other cultural identities, an interest and understanding of various civilizations and their histories, and the ability to see those differences as opportunities for constructive, respectful, and peaceful transactions."⁸⁵ While individual teachers may not acutely influence students, the educational environment as a whole is likely to impact many facets of a child's development. As the educational process prepares students for success in society, it must take account of a globalized society and prepare students for the interactions they will experience.

82. Margaret Sutton, *The Globalization of Multicultural Education*, 12 IND. J. GLOBAL LEGAL STUD. 97, 107 (2005).

83. *Id.*

84. Fernando Reimers, *Global Competency is Imperative for Global Success*, CHRON. HIGHER EDUC., Jan. 30, 2009, at A29, available at <http://chronicle.com/article/Global-Competency-Is/9742>.

85. *Id.*

The educational environment, then, will best prepare students by providing them an accurate picture of the greater society as a whole. Religion plays a part in this society, and thus an educational process “dialogue that excludes religious expression from its environment would miss important parts of our society.”⁸⁶ When teachers (and students) appear in religious garb in the classroom, this provides an early opportunity to accustom students to human differences and develop a positive approach to these differences. The exclusion of religion hinders the ability of students to navigate the global world. As a result, this concern weighs heavily on the balance in favor of religious garb.

V. TIPPING THE BALANCE: GLOBALIZATION IN EDUCATION

In an age of globalization and increased diversity, the justifications for religious garb statutes will only gain more relevance to issues of religious free exercise in schools. But regulation of teachers’ religious garb, as speech by public employees, is scrutinized under a balancing test, and the justifications offered in favor of statutes must be weighed against the countervailing interests of society. Ultimately, as populations become more diverse, we must account for the demands globalization places on the education of our youth.

Turning to the balancing test, the Establishment Clause concerns on both sides have little weight. Religious garb in the public schools may appear to be an Establishment Clause violation, but the Oregon and Pennsylvania courts have demonstrated that it is not. Conversely, a Pennsylvania court suggested that a religious garb statute might be an Establishment Clause violation, but, given the leeway states are permitted in achieving church-state separation, a religious garb statute is unlikely to be a violation. With these interests effectively cancelled out, the remaining interests determine whether religious garb should be regulated; the perceived need to protect students must be balanced against the demands of globalization. Three possible scenarios, presented below, demonstrate the resultant balance.

In the first scenario, teachers are role models⁸⁷ for students and students feel compelled to emulate their teachers. In this case, the courts’ fears are realized, and teachers’ religious garb subtly causes students to emulate their teachers, to question their own religion, or to stigmatize students of other faiths as outsiders. Faced with such a

86. Lester, *supra* note 57, at 98.

87. Here, I employ the definition as used in the study discussed *supra* in Part III. Bricheno & Thornton, *supra* note 59, at 393-94 (defining a role model as “namely a person you respect, follow, look up to or want to be like”).

relationship, the balance tips in favor of regulating religious garb so as to protect schools' educating and socializing functions.

In the second scenario, the impact of teachers on students is attenuated, and teachers are seen as conduits of knowledge. If teachers are seen neither as role models nor legitimate members of a child's social circle, and are instead viewed by students merely as transferors of information, teachers' religious garb has no effect at all. This scenario suggests a decision in favor of teachers' religious rights: teachers desiring to wear religious garb would be permitted to subtly adhere to the tenets of their faith without interfering with the schools' educating and socializing functions.

In the third scenario, teachers are not role models, but children see them as legitimate members of their social circle. Under this theory, teachers exert academic influence over their students, but are nevertheless visible and respected members of the community. Teachers' religious garb may familiarize students with diversity symbols and educate students about diversity in a global world. In this way, teachers' religious garb could serve the demands globalization places on educators and lawmakers and further the schools' educating and socializing goals. Such a policy would again provide those teachers the opportunity to adhere to the tenets of their faith, and, at the same time, aid in school children's acquisition of knowledge and social skills.

If teachers do not influence students, then the policy justification that the restriction of religious garb furthers schools' educating and socializing functions fails. Nevertheless, if teachers have influence by way of their visibility and respectability as community members, a counterargument emerges in favor of allowing teachers to wear religious garb in the classroom, for religious garb, in fact, contributes to the schools' educating and socializing functions. Even if teachers serve as more than academic role models for students, additional research is needed regarding the degree and manner in which this kind of influence arises. At the present time, teachers' religious influence on students is too speculative to tip the balance in favor of prohibiting teachers' religious garb in the name of preserving the schools' educating and socializing functions, especially in light of the countervailing justification of globalization and education.

A preference for secularism, which arguably fosters religious hostility,⁸⁸ creates problems in an era of globalization when citizens of different countries, including theocratic countries, interact on a daily basis. Globalization requires exposure to positive experiences with

88. McConnell, *supra* note 66, at 190.

others from different backgrounds during the educational years.⁸⁹ If a school were to prohibit religious garb, it would send a negative message about one dimension of difference—religious difference—because “attempting to create neutrality within the school walls may have the opposite effect of highlighting the absence of that which the schools are trying to equalize.”⁹⁰ In contrast, McConnell’s pluralism ideal fosters a “broadly inclusive public sphere, in which the public is presented a wide variety of perspectives, religious ones included.”⁹¹ This inclusive public sphere, in conjunction with positive experiences with diversity through teachers’ religious garb, should be implemented in schools because it will best attain the goals of global education.

Long considered an instrument of socialization, the educational system provides a unique opportunity to foster the skill of tolerant navigation of a globalized world. Indeed, this is not a new phenomenon—the steps the U.S. civil rights movement took toward racial tolerance were achieved in part through integration of public schools.⁹² Now, education needs to be brought into the globalization era by teaching students about other dimensions of difference in addition to race, for students must also appreciate cultural, religious, ethnic, and national diversity.⁹³ In this way, our youth will acquire an understanding and appreciation for difference that will aid them as adults in the globalized world. Continued repetition of abstract conventional “wisdom,” such as the interests articulated in Part III, will impede achievement of this goal.

89. See Sutton, *supra* note 82, at 107 (“While fostering a sense of citizenship remains an important function of mass schooling, it is becoming less and less viable to do so at the expense of socializing children for their futures in a global society.”).

90. Dianne Gereluk, *Children’s Autonomy and Symbolic Clothing in Schools: Help or Hindrance?* in PHILOSOPHY OF EDUCATION IN THE ERA OF GLOBALIZATION 198, 201 (Yvonne Raley & Gerhard Preyer eds., 2010).

91. McConnell, *supra* note 66 at 193.

92. Integrated public schooling validated the identities of socially oppressed groups, and prevented the proliferation of racial animus against the “other” by forcing students, at a very young age, to confront difference. See *Brown v. Bd of Educ.*, 347 U.S. 483, 493-94 (1956) (explaining that public school “is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment” and, as a result, “to separate [students] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”). For a discussion of the role of the civil rights movement in encouraging multicultural education, see Sutton, *supra* note 82, at 97-98.

93. See also *id.* (describing how globalization has complicated the meaning of cultural identity and how school systems are changing, or need to change, to cope with the new universal diversity).

Although McConnell's argument is forceful in the global education context, additional research and discussion is needed before one can wholeheartedly apply McConnell's approach to education. In particular, more information is needed as to the degree of influence teachers truly have on students. This inquiry must focus both on teachers' influence and the correlation of influence with students' ages. It may be that peer groups become more important than teachers to students during their high school years, but that teachers take a more central role in the lives of younger students. If authorities allow teachers' religious garb, they must decide whether it will be allowed at all grade levels or only at higher grade levels.

Authorities must also decide if there will be some limit to the kind and size of religious garb.⁹⁴ They must decide whether to consider the perspective of others regarding clothing as religious exercise.⁹⁵ For example, in the context of Muslim headscarves, some have suggested that the headscarf is about suppression of women, suppression of women's sexuality, or proselytization.⁹⁶ Authorities also must address how teachers should explain the garb when questioned by students. Some teachers have offered to describe the garb as a personal choice,⁹⁷ but in light of McConnell's argument, it seems that such a response supports an air of hostility toward, or embarrassment about, religion. These and other preliminary considerations must be addressed if the educational system is to fulfill its aspirations of educating students and preparing them for effective lives in the global world.

94. See, e.g., *Nichol v. ARIN Intermediate Unit 28*, 268 F. Supp. 2d 536, 552-54 (W.D. Pa. 2003) ("As this history demonstrates, the chances of disruption, distraction, or confusion over jewelry, albeit one expressing a religious viewpoint, are slim to none—it hasn't happened and is not likely to. . . . Given the inconspicuous nature of plaintiff's expression of her religious beliefs by wearing a small cross on a necklace, and the fact that other jewelry with secular messages or no messages is permitted to be worn at school, it is extremely unlikely that even elementary students would perceive Penns Manor or ARIN to be endorsing her otherwise unvoiced Christian viewpoint, and defendants certainly presented no evidence to support such a perception. Merely employing an individual, such as plaintiff, who unobtrusively displays her religious adherence is not tantamount to government endorsement of that religion, absent any evidence of endorsement or coercion.").

95. See *EEOC v. Reads, Inc.*, 759 F. Supp. 1150, 1153 (E.D. Pa. 1991) (determining whether garb is religious by what objective observers would conclude about whether the wearer's dress is religiously motivated).

96. For an extended discussion of these themes, see Aliah Abdo, *The Legal Status of Hijab in the United States: A Look at the Sociopolitical Influences on the Legal Right to Wear the Muslim Headscarf*, 5 HASTINGS RACE & POVERTY L.J. 441 (2008).

97. E.g., *Reads, Inc.*, 759 F. Supp. at 1153.

CONCLUSION

France's recent policy prohibiting the wearing of "conspicuous" religious symbols by students generated much criticism in the United States,⁹⁸ yet critics of the French law often overlook the concomitant rights of teachers. Even in the United States, at least two states prohibit teachers' wearing of religious garb. However, religious garb should be permitted due to teachers' and society's strong interests in freedom of religious expression.

As a form of speech akin to core political speech, religious exercise is afforded the protection of the *Pickering* balancing test in the context of government-employment. On one side of the balance exists the government's interest in preserving church-state separation and achieving its schools' educating and socializing functions, while the other side consists of society's and teachers' interest in expressing religious beliefs. Courts often justify the restriction of teachers' religious expression in the name of school goals; therefore, this Note has focused on the validity of these goals.

As an important preliminary step in the balance, the courts in Pennsylvania and Oregon signaled that allowing a teacher to wear religious garb does not violate the Establishment Clause. Rather, a legislature is entitled to make a "policy choice" whether to allow teachers' religious garb. In the context of religious garb statutes, the driving forces for upholding these laws are the perceived ill effects on schools' socializing and educating functions.

Courts and legislators worry that teachers in religious garb will influence students to convert to the teachers' religion. They base this fear on the belief that teachers serve as role models for students, but there is no concrete scientific evidence to support this contention. In fact, one study suggests that students may not look up to their teachers after all.⁹⁹ Faced with such an ambiguous interest, the courts can hardly find a threat substantial enough to justify the restriction of teachers' religious free exercise rights.

Conventional wisdom has justified religious garb statutes by way of the belief that teachers in religious garb signify government sponsorship of religion. Yet, even if one believes that students will understand the relationship between the government, schools, and teachers, it does not follow that students will see their teachers' religious garb as sponsorship by the government. Conversely, it is equally likely that, if the government were to prohibit religious garb, students will see this

98. See *Custos*, *supra* note 1, at 340; *Gey*, *supra* note 2, at 8; *Walterick*, *supra* note 2, at 259.

99. *Bricheno & Thornton*, *supra* note 59, at 393-94.

governmental intervention in the private affairs of their teachers as governmental hostility to religion. As a result, this Note has shown that both concerns may be exaggerated and misplaced.

More importantly, courts must not overlook the heavy interests on the opposite side of the scale. It is unclear whether a statute prohibiting religious garb would violate the Establishment Clause. Regardless, teachers clearly have a valuable interest in expressing their religious beliefs. Yet, there are also strong implications for effective global-focused education when teachers are not allowed to wear religious garb.

Religious garb in the classroom should be permitted because this type of attire does not interfere with schools' goals and in fact *contributes* to the educational process. "Given the growing interdependence among nations as a result of trade, increased communications, and migratory flows, it will be crucial for people to develop the skills to understand and help resolve [the resultant significant global] challenges,"¹⁰⁰ and the educational system is uniquely positioned to offer these skills to the nation's youth. While increased religious diversity is just one of many facets of globalization, tomorrow's citizens must gain tolerance and knowledge of this diversity. By allowing teachers to wear religious garb, the schools provide a safe environment in which students may acclimate to this and other dimensions of difference.

The hostility symbolized by governmental restriction of teachers' religious garb may create a secular culture in which students will grow. When these students leave the sterilized confines of the classroom, they may be ill-equipped to handle a world in which most people profess and exhibit signs of some religious belief or disbelief. In this respect, a government that respects and allows religious pluralism will best prepare students for the future.

While legislative policy choices may strive to achieve legitimate goals, these policies, in effect, have taken their respective states much further in the direction of uniformity and secularization than neutrality; however, the globalized world is neither uniform nor profoundly secular. By specifically targeting religious garb, these states signal hostility toward religion and preference for secular themes. The continuation of such policies will adversely affect students' ability to navigate through a globalized society in their adult lives.

100. Reimers, *supra* note 84.

